

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

KNARIK AVEDIKIAN GABRIYELIAN,

Plaintiff and Appellant,

v.

DEPARTMENT OF MOTOR VEHICLES,

Defendant and Respondent.

B209208

(Los Angeles County  
Super. Ct. No. BC382604)

APPEAL from a judgment of the Superior Court of Los Angeles County, Joseph R. Kalin, Judge. (Retired Judge of the L.A.Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Knarik Avedikian Gabrielyan, in pro. per., for Plaintiff and Appellant.

Edmund G. Brown, Jr., Attorney General, David S. Chaney, Chief Assistant Attorney General, James M. Schiavenza, Senior Assistant Attorney General, Pamela J. Holmes and Brent W. Reden, Deputy Attorneys General, for Defendant and Respondent.

## I. INTRODUCTION

Plaintiff, Knarik Avedikian Gabriyelyan, appeals from an August 12, 2008 judgment of dismissal after a demurrer was sustained without leave to amend. The judgment is in favor of defendant, the Department of Motor Vehicles. We find plaintiff failed to comply with the Government Claims Act. (Gov. Code, § 810 et seq.) (All further statutory references are to the Government Code except where otherwise noted.) Accordingly, we affirm the judgment.

## II. BACKGROUND

### A. The Pleading

The operative pleading is a first amended complaint. Plaintiff alleged as follows. Plaintiff's husband owned and operated My Way Driving/Traffic Violator School. Plaintiff was a "secondary owner" of the business. Plaintiff's husband died on September 22, 2004. On October 19, 2004, defendant issued plaintiff a certificate of convenience, allowing the continued operation of the school for one year from her husband's death. However, the first amended complaint alleges "[T]he school was wrongfully close[d] prior to the expiration of [the certificate of convenience] taking place May 31, 2005." On January 24, 2006, plaintiff had filed an application for an occupational license as a driving/traffic violator school owner in accordance with the Vehicle Code. On April 19, 2006, plaintiff's application was erroneously rejected for alleged violations of Vehicle Code sections 11107, subdivisions (a)(4) and (a)(8) and Penal Code section 134. On April 20, 2007, following an administrative hearing, Administrative Law Judge N. Gregory Taylor found plaintiff not guilty of alleged Vehicle Code violations in the operation of the business and granted her an owner's license.

Plaintiff further alleged defendant's wrongdoing as follows. She was in compliance with all laws and regulations governing operation of the business and the

County of Los Angeles wrongfully closed the school. Plaintiff alleges she was “exploited . . . by [d]efendants. . . as she was not immediately issued a renewal” license as the owner of the business upon her husband’s death. The cost of the applications, tests, fees, and other expenses to obtain the license exhausted plaintiff’s time and money. Plaintiff was at all times fully qualified to be a licensed owner of the business. She was wrongfully denied a license. Defendant failed to perform its duty and issue a license. Defendant acted with knowledge plaintiff would be harmed and with reckless disregard of the consequences to plaintiff. Defendant’s acts were not privileged.

Plaintiff alleged she had complied with the government claim requirement. Plaintiff asserted three causes of action, for failure to discharge mandatory duty (first), negligence (second), and intentional infliction of emotional distress (third). Plaintiff attached multiple exhibits to her pleading.

#### B. The Demurrer

Defendant demurred to plaintiff’s first amended complaint. Defendant requested judicial notice of: Judge Taylor’s proposed decision; the department’s subsequent decision, including the factual findings setting forth the sequence of events; and the original complaint in this action. Defendant argued: plaintiff failed to timely comply with the Government Claims Act; her cause of action accrued, at the latest, on April 19, 2006, when she was denied a license; she had six months, until October 19, 2006, to file a claim; but, as admitted in her original complaint, she did not file her claim until September 12, 2007; and she did not request leave to file a late claim. In addition, defendant asserted it was immune from liability under sections 815.2, 820.2, and 821.6 and plaintiff failed to state a cause of action for breach of a mandatory duty on section 815.6, negligence, or intentional emotional distress infliction theories.

Plaintiff opposed the demurrer. She argued defendant’s allegation her government claim was untimely was without merit and she had alleged sufficient facts to support her

causes of action. Alternatively, plaintiff requested leave to amend. Plaintiff attached exhibits to her opposition.

Defendant's demurrer was sustained without leave to amend and the case was dismissed. Plaintiff filed a notice of appeal. We construe plaintiff's July 3, 2008 notice of appeal as from the August 12, 2008 judgment of dismissal. (Cal. Rules of Court, rule 8.104(e); *Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 669; *Vesely v. Sager* (1971) 5 Cal.3d 153, 158, fn. 2; *In re Social Services Payment Cases* (2008) 166 Cal.App.4th 1249, 1262, fn. 4; *Unterberger v. Red Bull North America, Inc.* (2008) 162 Cal.App.4th 414, 419.)

### III. DISCUSSION

#### A. Standard of Review

The Supreme Court has set forth the applicable standard of review on appeal, as here, from a demurrer dismissal: ““We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.” [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when is it sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff.’ (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; see also *McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415 [noting that our review is de novo].)” (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.)

## B. Government Claims Act

Section 815 abolishes common law tort liability for public entities. (*Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 899; *Zelig v. County of Los Angeles*, *supra*, 27 Cal.4th at p. 1127.) Section 815 states: “Except as otherwise provided by statute: [¶] (a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.” A plaintiff seeking money or damages against a public entity must file a government claim. (§ 911.2; *Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 208; *State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1239.) The timely filing of a government claim is a condition precedent to maintaining legal action against a public entity; failure to file a timely claim is fatal to the cause of action. (§§ 905, 905.2; 945.4; *City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 737-738; *State of California v. Superior Court*, *supra*, 32 Cal.4th at p. 1245; *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 454.) Moreover, the claim must be filed with the correct public entity. (*Santee v. Santa Clara County Office of Education* (1990) 220 Cal.App.3d 702, 713-714; *Johnson v. San Diego Unified School Dist.* (1990) 217 Cal.App.3d 692, 697-698; *Jackson v. Board of Education* (1967) 250 Cal.App.2d 856, 860.) A claim against the state must be filed with the California Victim Compensation and Government Claims Board. (§ 905.2.)

Pursuant to section 911.2, subdivision (a): “A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented . . . not later than six months after the accrual of the cause of action. A claim relating to any other cause of action shall be presented . . . not later than one year after the accrual of the cause of action.” Section 901 governs accrual of a cause of action, “For the purpose of computing the time limits prescribed by Sections 911.2 . . . , the date of the accrual of a cause of action to which a claim relates is the date upon which the cause of action would be deemed to have accrued within the meaning of the statute of limitations which would be applicable thereto if there were no requirement that a claim

be presented to and be acted upon by the public entity before an action could be commenced thereon.” (*Shirk v. Vista Unified School Dist.*, *supra*, 42 Cal.4th at pp. 208-209; *Whitfield v. Roth* (1974) 10 Cal.3d 874, 884-885; *Ovando v. County of Los Angeles* (2008) 159 Cal.App.4th 42, 63.) The Court of Appeal described when a cause of action accrues: “A cause of action ordinarily accrues when the wrongful act occurs, the liability arises, and the plaintiff is entitled to prosecute an action. (*Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809, 815; *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397.) In other words, a cause of action accrues ““““upon the occurrence of the last element essential to the cause of action.”””” (*Howard Jarvis [Taxpayers Assn. v. City of La Habra]*, *supra*, [25 Cal.4th] at p. 815.) The common law delayed discovery rule is an exception to the general rule and provides that a cause of action does not accrue until a plaintiff discovers, or reasonably should discover, the cause of action. ‘A plaintiff has reason to discover a cause of action when he or she “has reason at least to suspect a factual basis for its elements.” [Citations.]’ (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 807.)” (*Ovando v. County of Los Angeles*, *supra*, 159 Cal.App.4th at p. 66.) The matters that the plaintiff must suspect are the generic elements of wrongdoing, causation, and harm. (*Fox v. Ethicon Endo-Surgery, Inc.*, *supra*, 35 Cal.4th at p. 807; *Norgart v. Upjohn*, *supra*, 21 Cal.4th at p. 397.)

Here, plaintiff’s cause of action accrued on May 31, 2005, when the business was “wrongfully close[d]” or on April 19, 2006, when her license application was denied. At that point, the alleged wrongful acts had occurred and plaintiff had reason to suspect defendant had caused her injury. In her original and first amended complaints, plaintiff alleged she filed a government claim with the state on September 12, 2007, more than a year after her cause of action accrued. That claim was untimely. (§ 911.2, subd. (a); see *City of Stockton v. Superior Court*, *supra*, 42 Cal.4th at pp. 737-738.) In her first amended complaint, plaintiff alleged she filed a September 12, 2007 original and an October 10, 2007 amended government tort claim *with the County of Los Angeles*. Those claims were filed with the wrong public entity. In short, plaintiff failed to allege timely compliance with the government claim requirement or an excuse for noncompliance.

Further, she has not asserted she is able to amend her pleading to cure the defect. As a result, plaintiff cannot maintain this action.

#### IV. DISPOSITION

The judgment is affirmed. Defendant, the Department of Motor Vehicles, is to recover its costs on appeal from plaintiff, Knarik Avedikian Gabriyelyan.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P. J.

We concur:

ARMSTRONG, J.

KRIEGLER, J.